

## Social Security Administration

## § 410.393

the widow of such miner or of whether she was dependent on such miner.

(c) *Relationship and dependency of surviving divorced wife.* The determination as to whether an individual purporting to be a surviving divorced wife of a miner was related to or dependent upon such miner is made when such individual effectively files a claim for benefits (see § 410.227) as a surviving divorced wife. Such determination is made with respect to the time of the miner's death. A prior determination that such individual was, or was not, the divorced wife of such miner, pursuant to §§ 410.311 and 410.351, for purposes of augmenting the miner's benefits for a certain period (see § 410.510(c)), is not determinative of the issue of whether the individual is the surviving divorced wife of such miner or of whether she was dependent on such miner.

[37 FR 20640, Sept. 30, 1972]

### § 410.391 Legal impediment.

For purposes of this subpart C, *legal impediment* means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

[36 FR 23756, Dec. 14, 1971]

### § 410.392 Domicile.

(a) For purposes of this subpart C, the term *domicile* means the place of an individual's true, fixed, and permanent home to which, whenever he is absent, he has the intention of returning.

(b) The domicile of a deceased miner or widow is determined as of the time of his or her death.

(c) The domicile or a change in domicile of a beneficiary or other individual is determined with respect to the period or periods of time as to which the issue of domicile is material.

(d) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is ap-

plied as if such individual were then domiciled there.

[36 FR 23756, Dec. 14, 1971, as amended at 37 FR 20640, Sept. 30, 1972]

### § 410.393 "Member of the same household"; "living with"; "living in the same household"; and "living in the miner's household".

(a) *Defined.* (1) The term *member of the same household* as used in section 402(a)(2) of the Act (with respect to a wife); the term *living with* as used in section 402(e) of the Act (with respect to a widow); and the term *living in the same household* as used in §§ 410.310(d) and 410.320(d) (with respect to certain wives and widows, respectively), mean that a husband and wife were customarily living together as husband and wife in the same place of abode.

(2) The term *living in the miner's household* as used in section 412(a)(5) of the Act (with respect to a parent, brother, or sister (see § 410.380)), means that the miner and such parent, brother, or sister, were sharing the same residence.

(b) *Temporary absence.* The temporary absence from the same residence of either the miner, or his wife, parent, brother, or sister (as the case may be), does not preclude a finding that one was *living with* the other, or that they were *members of the same household*, etc. The absence of one such individual from the residence in which both had customarily lived shall, in the absence of evidence to the contrary, be considered temporary;

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from his or her residence did not exceed 6 months, and neither individual was outside the United States, and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together at some time in the reasonably near future.